

PLEASE NOTE THAT A FORMAL APPLICATION FOR A HABITAT LOSS PERMIT HAS NOT BEEN FILED AT THIS TIME. THE FOLLOWING IS A DRAFT FORM OF DECISION FOR A HABITAT LOSS PERMIT SHOWING THE FORMAT AND POSSIBLE CONDITIONS FOR A FUTURE HABITAT LOSS PERMIT. BECAUSE A FORMAL APPLICATION HAS NOT BEEN FILED, CERTAIN DATES, FINDINGS AND OTHER INFORMATION IS ABSENT FROM THE DRAFT FORM OF DECISION, THIS INFORMATION WILL BE INCLUDED IN THE FINAL FORM OF DECISION.

Draft date: May 28, 2009

DRAFT HABITAT LOSS PERMIT

APPLICATION NUMBER: HLP XX-XXX, LOG 86-08-002X

ASSOCIATED PERMIT(S): Welk Canyon Villas, TM5313RPL4

NAME OF APPLICANT: The Welk Group, Inc.

The project is subject to the County's Habitat Loss Permit Ordinance and requires issuance of a Habitat Loss Permit under the Endangered Species Act Section 4(d) rule for the California gnatcatcher (*Polioptila californica*). The action being addressed within these findings is the removal of coastal sage scrub (CSS) associated with the Lawrence Welk Canyon Villas project within the County of San Diego. The project is in the northern part of the Lawrence Welk Village Specific Plan and is located east of Interstate 15 in the unincorporated area of Jesmond Dene of the North County Metropolitan Subarea Plan area, bound on the east by open space easements for the Welk Specific Plan; on the north by agriculture (vineyard and fallow land), and on the south by developed portions of the specific plan including the golf course and multi-family dwelling units; on the west by Champagne Boulevard. (APN: 185-363-19). The project site is undeveloped with an existing open space easement. Native vegetation covers about three quarters of the property. The site has a prominent hill in the eastern half and the SF Moosa Creek jurisdictional drainage flowing from south to north near the western boundary of the property.

The project was discussed at the Agency Batching Meeting of February 15, 2007. The site is within a block of developed, low, and medium value habitat on the Habitat Evaluation Map for the Draft North County Subarea Plan of MSCP. The NCCP Flowchart indicates that the site is "intermediate" for long-term conservation value.

DESCRIPTION/LOCATION OF LOSS:

The Habitat Loss Permit would authorize the take of 1.3 acre of coastal sage scrub habitat as shown on the "Proposed Project Vegetation and Sensitive Resources Figure" dated 04/28/09 and on file with DPLU as Habitat Loss Permit Number HLP XX-XXX.

The proposed project is a major subdivision to create 1 residential and 1 open space lot to accommodate 177 condominium units. The project site (APN 172-092-13) is approximately 21 acres at the north western boundary of the Welk Village Specific Plan area. Impacts are assumed based on the Grading Plan for the condominiums. There is an existing open space easement which includes a 9.4-acre block of CSS habitat and the project proposes to add 1.7 acres of CSS to that open space, and another 0.4 acres of buckwheat scrub near the SF Moosa Creek existing easement. An off-site dedication within the Welk Specific Plan area of 0.5 acres of CSS is also proposed to make up the 2.6 acre NCCP preserve requirement.

Biological surveys were conducted by Helix Environmental Planning, Inc. and summarized in the biological technical report dated April 21, 2009. The site is dominated by coastal sage scrub habitat, disturbed habitat, and riparian oak forest. Table 1 summarizes the vegetation communities, the proposed impacts and the conditions that will be required in compliance with the NCCP.

Table 1
Vegetation Communities Impact and Compliance Summary

Habitat	Existin g Acres	Onsite Impact Acres	Ratio*	Required Preserva- tion Acres	Open Space Dedication Acres	Existing Open Space Easement Acres	Impact Neutral
Southern willow scrub	0.23	0	-	-	-	0.21	.02
Mule fat scrub	0.52	0	-	-	-	0.52	0
Tamarisk scrub	0.11	0	-	-	-	0.10	0
Coast Live Oak Woodland	0.4	0.2	-	-	-	0.2	0
Unvegetated channel	0.1	0	-	-	-	-	0
Coastal Sage Scrub	12.2	1.3	2:1	2.6	1.7 onsite & 0.5 off-site	9.2	0.3
Flat-topped buckwheat – disturbed	0.7	0	-	-	0.4	0.2	0.1
Non-Native Grassland	1.3	0.5	-		0.1	0.3	0
Eucalyptus Woodland	0.6	0.4	-		0.1	0.1	0.1
Non-Native Vegetation Disturbed/ Developed	4.9	3.5	-		0.1	0.1	1.1
Total	21.0	5.8	-	2.6	2.9	10.9	1.5

*Impact mitigation occurred with the approval of the Specific Plan in 1986.

In addition to the vegetation communities provided in Table 1, the project may indirectly impact one California gnatcatcher (*Polioptila californica californica*) territory. Protocol surveys in 2003 and 2005 were negative; construction monitoring on an adjacent parcel

in 2007 indicated that one gnatcatcher was on the site in the existing open space easement. Other sensitive species that were detected on the project site include orange-throated whiptail and southern California rufous-crowned sparrow, western bluebird, turkey vulture and red-shouldered hawk, and mule deer (none of these species were observed in the development footprint). One jurisdictional wetland occurs on site, but it will not be impacted by the project. Wildlife movement corridors are associated with the site because the site links substantial open space on the mountains to the east with undeveloped land to the west, and along I-15 and South Fork (SF) Moosa Creek.

The project was approved in 1986 and habitat mitigation occurred in the form of dedication of about 54 acres of open space. The EIR stated that the project site was mixed chaparral: no CSS impacts were ever evaluated. Therefore this analysis focuses on loss of CSS and Preserve Design. The CSS impacts will be compensated in accordance with the NCCP on site (with a portion elsewhere within the Welk Specific Plan area) with proposed biological open space easements and permanent fencing and signage. An amendment to the Habitat Management Plan (HMP) for Welk Garden (Mountain) Villas to include the Canyon Villas open space is proposed.

The Welk Garden Villas project implemented a habitat creation program along SF Moosa Creek within the current project boundaries. Creation and removal of invasive non-native vegetation have been approved with a Revegetation Plan and open space dedication.

To avoid potential impacts to sensitive avian species, the project will have a condition to restrict brushing, clearing or grading within 300 feet of occupied gnatcatcher habitat or of a migratory bird nest during the breeding season or within 500 feet of an active raptor nest. Pre-construction surveys may be conducted to demonstrate absence of nesting activity and work may commence with the approval of the County and wildlife agencies. Other conditions to avoid potential impacts include placement of temporary construction fencing, stormwater controls (pre- and post- construction), and dedication of 100-foot fire fuel management zones have been incorporated into the Major Use Permit/Tentative Map, such that there will be no clearing in the proposed or existing open space easements.

CONDITIONS OF APPROVAL:

The following conditions are proposed for TM5313RPL4. For the final Habitat Loss Permit, the list of conditions will be modified to require satisfaction of all conditions prior to use and reliance on the HLP:

I. Prior to the approval of any plans, issuances of any permits, and approval of any final maps, provide evidence to the satisfaction of the Director of Public Works (DPW) that the following “Specific Environmental Items” have been indicated on the grading, and or improvement plans:

- A. The grading and or improvement plans shall indicate permanent fences or walls along the open space boundary and be in compliance with the Preliminary Grading Plan dated May 19, 2009 on file with the Department of Planning and Land Use as Environmental Review Number 86-08-002D. Any change in construction materials and fence or wall design shall be approved by the Department of Planning and Land Use prior to installation.
- B. The grading and or improvement plans shall indicate open space signs along the open space boundary as shown on the Preliminary Grading Plan dated May 19, 2009 on file with the Department of Planning and Land Use as Environmental Review Number 86-08-002D.
- C. The grading and or improvement plans shall indicate Temporary Orange Construction fencing to protect from inadvertent disturbance of all open space easements that do not allow grading, brushing or clearing. The fencing shall be placed along the open space boundary as shown on the Preliminary Grading Plan dated May 19, 2009 on file with the Department of Planning and Land Use as Environmental Review Number 86-08-002D.
- D. The grading and or improvement plans shall indicate the location of oak trees scheduled for transplantation to protect them from inadvertent disturbance until transplantation has occurred. The tree locations are shown on the Preliminary Grading Plan dated May 19, 2009 on file with the Department of Planning and Land Use as Environmental Review Number 86-08-002D.

II. Prior to the approval of any plans, issuances of any permit, and approval of any final maps, provide evidence to the satisfaction of the Director of Public Works (DPW) that the following "Specific Environmental Notes" have been placed on the grading, and or improvement plans:

- A. "Prior to the commencement of any grading and or clearing in association with this grading plan, temporary orange construction fencing shall be placed to protect from inadvertent disturbance of all open space easements that do not allow grading, brushing or clearing. Temporary fencing is also required in all locations of the project where proposed grading or clearing is within 100 feet of an open space easement boundary. The temporary fencing shall be removed after the conclusion of such activity."
- B. "Restrict brushing, clearing or grading within 300 feet of coastal sage scrub habitat during the California gnatcatcher breeding season (February 15 through August 31), or within 500 feet of an active raptor nest (January 15 through September 15), or within 300 feet of an active migratory bird nest (February 15 through August 31). Pre-construction surveys may be conducted to demonstrate absence of nesting activity and work may continue with the approval of the County and wildlife agencies. This restriction may be modified to allow construction activities that do not exceed 60 dBA or ambient noise (whichever is

greater) within any habitat supporting active nests, with written concurrence from the Wildlife Agencies. A County certified biologist shall monitor construction activities while the nests are active. If it is determined that noise levels from construction activity exceeds or is likely to exceed these amounts, all construction activities shall immediately cease and shall not be resumed until a nesting bird survey determines that the nesting birds have vacated the site, or a modified plan for the construction activities is agreed upon which will assure that the above noise levels are not exceeded. all brushing, clearing and/or grading such that none will be allowed within 300 feet of coastal sage scrub habitat during the breeding season of the California gnatcatcher."

- C. "Restrict all brushing, clearing and/or grading such that none will be allowed within 50 feet of oak trees designated for transplantation until the trees have been removed."
- D. "Prior to the conclusion of grading activities and Final Grading Release, provide evidence to the satisfaction of the Director of Planning and Land Use that the permanent fences or walls, and open space signs have been placed along the biological open space boundary as shown on these plans and the Preliminary Grading Plan dated May 19, 2009 on file with the Department of Planning and Land Use as Environmental Review Number 86-08-002D.
 - 1. Evidence shall be site photos and a statement from a California Registered Engineer, or licensed surveyor that the permanent walls or fences, and open space signs have been installed.
 - 2. The signs must be corrosion resistant, a minimum of 6" x 9" in size, on posts not less than three (3) feet in height from the ground surface, and must state the following:

Sensitive Environmental Resources
Area Restricted by Easement
No entry without written permission from the County of San Diego
Report violations to County Department of Planning and Land Use
Reference: (TM5313, Log No 86-08-002D)"

III. The following conditions shall be complied with on the approved Final Map or before a Final Map is approved by the Board of Supervisors and filed with the County Recorder of San Diego County (but not prior to issuance of grading or other permits):

- A. On the Final Map, vacate the open space easements shown on Tentative Map 5313 RPL4 as "Triangles-A, -B, and -U" (see Easement Notes). These areas will be rededicated as part of the following easements, excepting the portions included within the existing Welk View Drive road easements:

(Wetland and buffer easement)

- B. On the Final Map, the applicant shall, grant to the County of San Diego, an open space easement as shown on Tentative Map 5313 RPL4 as "Square-D." This easement is for the protection of biological resources and prohibits all of the

following on any portion of the land subject to said easement: grading; excavation; placement of soil, sand, rock, gravel, or other material; clearing of vegetation; construction, erection, or placement of any building or structure; vehicular activities; trash dumping; or use for any purpose other than as open space. Granting of this open space authorizes the County and its agents to periodically access the land to perform management and monitoring activities for the purposes of species and habitat conservation.

The sole exception(s) to this prohibition are:

1. Selective clearing of vegetation by hand to the extent required by written order of the fire authorities for the express purpose of reducing an identified fire hazard. While clearing for fire management is not anticipated with the creation of this easement, such clearing may be deemed necessary in the future for the safety of lives and property. All fire clearing shall be pursuant to the Uniform Fire Code and the Memorandum of Understanding dated February 26, 1997, between the wildlife agencies and the fire districts and any subsequent amendments thereto.
2. Activities conducted pursuant to a revegetation or habitat management plan approved by the Director of Planning and Land Use or the Director of Public Works.
3. Vegetation removal or application of chemicals for vector control purposes where expressly required by written order of the Director of Environmental Health.
4. Activities required to be conducted pursuant to a landscaping plan approved by the Director of Planning and Land Use.
5. Maintenance and construction of private and public drainage facilities to the extent approved or required by written order of the Director of Public Works for the express purpose of reducing an identified flooding or drainage hazard. All construction and maintenance of drainage facilities pursuant to this exception shall not be initiated until all applicable federal, state and local permits (e.g., California Section 1600 Streambed Alteration Agreement, County Watercourse Permit) have been obtained.
6. Activities specifically allowed by public utility easement numbers 73-061339; 78-142496; and Book 4934, Page 532, and any other such easements previously recorded within said easements.

(Small western easement)

- C. On the Final Map, the applicant shall, grant to the County of San Diego, an open space easement as shown on Tentative Map 5313 RPL4 as "Square-C." This easement is for the protection of biological resources and prohibits all of the

following on any portion of the land subject to said easement: grading; excavation; placement of soil, sand, rock, gravel, or other material; clearing of vegetation; construction, erection, or placement of any building or structure; vehicular activities; trash dumping; or use for any purpose other than as open space. Granting of this open space authorizes the County and its agents to periodically access the land to perform management and monitoring activities for the purposes of species and habitat conservation.

The sole exception(s) to this prohibition are:

1. Selective clearing of vegetation by hand to the extent required by written order of the fire authorities for the express purpose of reducing an identified fire hazard. While clearing for fire management is not anticipated with the creation of this easement, such clearing may be deemed necessary in the future for the safety of lives and property. All fire clearing shall be pursuant to the Uniform Fire Code and the Memorandum of Understanding dated February 26, 1997, between the wildlife agencies and the fire districts and any subsequent amendments thereto.
2. Activities conducted pursuant to a revegetation or habitat management plan approved by the Director of Planning and Land Use or the Director of Public Works.

(Eastern hillside easement)

- D. On the Final Map, the applicant shall, grant to the County of San Diego, an open space easement as shown on Tentative Map 5313 RPL4 as "Square-E." This easement is for the protection of biological resources and prohibits all of the following on any portion of the land subject to said easement: grading; excavation; placement of soil, sand, rock, gravel, or other material; clearing of vegetation; construction, erection, or placement of any building or structure; vehicular activities; trash dumping; or use for any purpose other than as open space. Granting of this open space authorizes the County and its agents to periodically access the land to perform management and monitoring activities for the purposes of species and habitat conservation.

The sole exceptions to this prohibition are:

1. Selective clearing of vegetation by hand to the extent required by written order of the fire authorities for the express purpose of reducing an identified fire hazard. While clearing for fire management is not anticipated with the creation of this easement, such clearing may be deemed necessary in the future for the safety of lives and property. All fire clearing shall be pursuant to the Uniform Fire Code and the Memorandum of Understanding dated February 26, 1997, between the wildlife agencies and the fire districts and any subsequent amendments thereto.

2. Activities conducted pursuant to a revegetation or habitat management plan approved by the Director of Planning and Land Use or the Director of Public Works.
 3. Installation of the bolder stabilization devices that are required prior to completion of rough grading for TM5313RPL4.
- E. Grant by separate document to the County of San Diego a Limited Building Zone Easement as shown on the Preliminary Grading Plans dated May 19, 2009 on file with the Department of Planning and Land Use as Environmental Review Number 86-08-002D. The purpose of this easement is to limit the need to clear or modify vegetation for fire protection purposes within the adjacent biological open space easement and prohibits the construction or placement of any structure designed or intended for occupancy by humans or animals.
- F. Provide evidence to the satisfaction of the Director of Planning and Land Use that a contract with a biological construction monitor has been executed to perform the following duties: (1) be onsite daily during vegetation clearing, grubbing, and grading when these activities are within 300 feet of biological open space or offsite native vegetation; (2) ensure that all habitat protection measures are in place including fencing and erosion control measures adjacent to preserved areas and report deficiencies immediately to the DPW Construction Inspector; (3) periodically monitor the work area for excessive dust generation; (4) train contractors and construction personnel in the purpose for resource protection, a description of the gnatcatcher and its habitat, and the conservation measures that are required during project construction; (5) halt work and notify DPW Construction Inspector immediately when deficiencies require mediation; (6) be responsible for notification with the Wildlife Agencies and the DPLU Compliance Officer within 24 hours any time protected habitat or endangered species have been affected by construction; (7) be responsible for remediation if impacts to preserved habitat should occur; (8) produce weekly reports and submit by e-mail to the DPLU Compliance Officer and to keep at the project site; (9) produce a final report at the completion of each phase or unit and submit to the DPLU Compliance Officer; and (10) determine if nesting migratory birds will be affected by clearing and grading and direct construction activities away from nesting areas;
- G. Submit to and receive approval from the Director of the Department of Planning and Land Use, a Resource Management Plan (RMP). The RMP shall be for the perpetual management of 13.3 acres of open space as shown on the Preliminary Grading Plan dated May 19, 2009 on file with the Department of Planning and Land Use as Environmental Review Number 86-08-002D. The RMP shall be consistent with HMP 06-003 for the Welk Mountain Villas project, on file with the Department of Planning and Land Use as Environmental Review Number 98-08-025. The plan shall be prepared and approved pursuant to the County of San Diego Biological Report Format and Requirement Guidelines and shall include

the task of maintaining the area of low fuel native species in easement "D" within 100 feet of the habitable structure. The RMP shall be implemented through an Open Space Management Agreement between the County and the applicant and funding shall be assured in perpetuity.

- H. Submit to and receive approval from the Director of the Department of Planning and Land Use, a Landscape Plan which includes the transplantation of 8 coast live oak trees (*Quercus agrifolia*) and install an additional 13 coast live oak trees, all along the eastern edge of development on site. In addition, if any transplanted coast live oak trees do not survive they shall be replaced at a 10:1 ratio. The landscape plan shall also include revegetation with low fuel native species in a portion of open space easement "D" (portion within 100 feet of the habitable structure) as shown on the Preliminary Grading Plan dated May 19, 2009 on file with the Department of Planning and Land Use as Environmental Review Number 86-08-002D.

ENVIRONMENTAL FINDINGS:

To be determined in Final HLP.

FINDINGS MADE IN SUPPORT OF THE ISSUANCE OF THE HABITAT LOSS PERMIT:

These Findings of Consistency with NCCP Process Guidelines address the Welk Canyon Villas project as identified in the Welk Canyon Villas Biological Technical Report, dated March 3, 2009 and documents contained in the record for this project, and pursuant to Section 86.104 of County of San Diego Ordinance No. 8365 (N.S.) and Section 4.2.g of the CSS NCCP Process Guidelines (CDFG, November 1993):

Finding 1.a: The habitat loss does not exceed the five percent guideline.

The proposed project will impact 1.3 acres of Coastal sage scrub (CSS) and no pairs of California gnatcatcher (*Polioptila californica californica*). Approved CSS losses as of the date of March 25, 2009 for the entire unincorporated County, including this approval, are presented in the following table:

Unincorporated Area CSS Cumulative Losses	
Total loss allowed under five percent guideline:	2,953.3 acres
Cumulative loss of Coastal sage scrub to date:	1,142.3 acres
Net loss due to this project:	1.3 acres
Total cumulative loss:	1,143.6 acres
Remaining loss under five percent guideline:	1,809.7 acres

Therefore, the habitat loss does not exceed the five percent guideline.

Finding 1.b: The habitat loss will not preclude connectivity between areas of high habitat values.

Based on the NCCP Conservation Guidelines and the Logic Flow-chart for Long-term conservation, the ranking of the quality of the on-site CSS habitat is intermediate. The area is also mapped as low and medium value habitat on the North County Multiple Species Conservation Program (NCMSCP) Habitat Evaluation Model.

The County and the Wildlife Agencies give special consideration to this region as being part of the "I-15 ladder", an archipelago movement corridor for gnatcatcher (Gnatcatchers are known to successfully use habitat in this manner: Bailey and Mock, 1998, MSCP, 2003). The I-15 right of way and adjacent CSS habitat is believed to be a significant dispersal corridor between core gnatcatcher populations (Famolaro and Newman 1998). Large blocks of habitat in close proximity to these corridors are important to maintaining the long-term viability of these regional linkages (Saunders et al. 1991).

The project site supports 12.9 acres of CSS-type habitats and connects to CSS habitat to the north and east. 1.3 acres of CSS would be impacted. The project site is known to support the federally threatened California gnatcatcher on an occasional basis. One gnatcatcher was observed in 2007 but none were observed during protocol surveys in 2002 and 2005.

The habitat loss does not preclude connectivity because the contiguous natural habitat is relatively large and the proposed development is primarily on disturbed habitat from existing development of Welk Village. While the project impacts 1.3 acre of CSS, 2.6 acres of CSS will be added to existing CSS in easements. The eastern hillside easement (9.6 acres) will be rededicated to include an additional 1.9 acres for a total of 11.5 acres. The western easement, the Moosa Creek easement (1.3 acres) will be rededicated to include an additional 0.5 acres for a total of 1.8 acres. The 21 acre property will have a total of 13.3 acres of biological open space (63 percent). An additional 0.5 acres of CSS will be added to an offsite easement that is within the Welk Specific Plan Area.

The project's CSS open space easements are contiguous with other open space easements in Welk Village for a total of approximately 70 acres. The project's CSS is approximately 1,000 feet from CSS associated with I-15 (between Champagne Boulevard and the I-15), but there is a CSS connection from offsite to the north of Welk Village to the I-15 CSS. The vicinity is comprised of large parcels that would be subject to CEQA and NCCP review for County approvals involving land alteration. Therefore, the County will be requiring future open space easements to connect with the areas of high habitat values discussed above.

In addition, SF Moosa Creek is preserved in an open space easement with a 50-foot minimum wetland buffer.

The development would not preclude connectivity between areas of high habitat values because (1) the development is proposed to be placed in the previously disturbed portion of the site and adjacent to existing development to the north and south, (2) existing links to CSS habitat along I-15 will not be altered, (3) the SF Moosa Creek corridor is preserved, and (4) existing and proposed preserved habitat on-site are adjacent to existing off-site open space easements to the east of the project increasing the overall preserve design benefits.

The proposed open space will also promote the preservation of the “I-15 ladder” area to the north by providing a hillside preserve that is visible from and proximal to occupied CSS along the I-15. Therefore, the project is expected to function as an archipelago for California gnatcatcher.

Finding 1.c: The habitat loss will not preclude or prevent the preparation of the subregional NCCP.

The habitat loss will not preclude or prevent the preparation of the subregional NCCP because the contiguous natural habitat is large (about 1340 acres east of I-15, GIS 2008 aerial polygon) and the proposed development will impact a small amount of natural habitat (1.3 acres of CSS) in an area that is mostly disturbed habitat and adjacent to existing development. In addition, the project preserves the on-site regional corridor through preservation of South Moosa Creek and a minimum 50-foot wetland buffer.

While there is an impact to 1.3 acres of CSS, 11.5 acres of CSS habitats on the project site and 0.5 acres off site in the Welk development have or will be dedicated as open space easements. The result is a substantial amount of coastal sage scrub (12.0 acres) that will remain undisturbed in the eastern hillside portion of the project site with connectivity to substantial off-site open space and natural habitats. Therefore, the project appropriately contributes to NCCP preserve design.

Finding 1.d: The habitat loss has been minimized and mitigated to the maximum extent practicable in accordance with Section 4.3 of the NCCP Process Guidelines.

The project proposes to minimize impacts by focusing development in areas of fragmented and lower quality habitat and adjacent to existing development. The interface between the proposed condominiums and the proposed open space has been kept to a minimum by providing access from beneath in a basement garage. A combination of walls and fences will separate the community from the biological resources to be preserved and will help to ensure habitat and species viability through active management of a Habitat Management Plan. The project will also take steps to ensure that indirect impacts are kept to a negligible level and that the preserve system will have long-term viability. The following conditions of approval have been incorporated into the project:

- Incorporation of fire fuel management into limited building zone easements located outside of open space easements.
- Placement of temporary fencing during grading/clearing under the supervision of a biological monitor.
- Placement of permanent fencing and signage between development areas and open space.
- Implementation of grading and clearing restrictions during breeding season months for California gnatcatcher, raptor species, and migratory birds.
- Active management of the open space areas to maintain biological values and functions through a Resource Management Plan (funded in perpetuity by the developer).

By implementing good preserve design and incorporating the above design elements into the project, it has been found that the area proposed for habitat loss has been minimized and mitigated to the maximum extent practicable.

Finding 2 The habitat loss will not appreciably reduce the likelihood of survival and recovery of listed species in the wild.

The removal of 1.3 acre of CSS associated with the visitor residential (time-share) development will not reduce the likelihood of survival and recovery of a listed species, particularly the federally threatened California gnatcatcher. The property is known to sometimes support this species, as one gnatcatcher was observed in 2007 in the proposed open space. However, no pairs have been observed during protocol surveys. No other listed plant or animal species are known to occur or are likely to occur within the vicinity of the project. Although the project will result in the removal or indirect impacts to 1.3 acre of CSS (and California gnatcatcher habitat) onsite, it is not expected to affect the species' survival and recovery in this area because the project proposes to place an additional 2.6 acres of coastal sage scrub habitat within biological open space easements on and near the site.

The hillside (eastern) preserve area will be contiguous with the extensive area of coastal sage scrub to the north and east with no man-made barriers. The project's biological open space includes the location where gnatcatchers were previously observed. The project will minimize edge effects to this open space area by dedication of a separate limited building zone easement, and providing open space fencing and signage.

SF Moosa Creek (western) preserve will also continue to function as a local corridor and indirect impacts will be reduced by incorporation of a wetland buffer, dedication of a separate limited building zone easement, fencing, and open space signage.

The two open space areas on site, together with the substantial off-site open space/natural lands, will provide breeding and foraging habitat for sensitive wildlife species and will also allow perpetuation of native plant species. These areas will be managed by a Resource Management Plan that will appropriately manage species and

preserve native habitats (with removal of invasive non-native species). Therefore, project will not affect any listed species' survival or recovery.

Finding 3: The habitat loss is incidental to otherwise lawful activities.

The project will require the obtainment of a grading permit, clearing permit, and/or road improvement plan. Construction will not commence until all appropriate permits have been approved and issued. In addition, the project will be required to be in conformance with all applicable laws, ordinances and acts; including the Southern California Coastal Sage Scrub NCCP and the County of San Diego's Habitat Loss Permit Ordinance 8365. This will require the issuance of a Habitat Loss Permit by the County of San Diego, with the concurrence of the Department of Fish and Game and U.S. Fish and Wildlife Service, prior to the clearing of any Coastal sage scrub supported on the project site. A state Streambed Alteration Agreement and a federal Section 401/404 permit are also identified as being required at this time. Construction and/or land use modification will not commence until all appropriate permits have been issued. The project has been found to be in conformance with Section 86.104 of the San Diego County Code. As such, the anticipated loss will be incidental to "otherwise lawful activities".

NCCP Flowchart

Under the County Habitat Loss Permit (HLP) Ordinance, habitat compensation is determined according to the NCCP Process Guidelines (California Department of Fish and Game, 1993). Ratios vary from 1:1 for lands with lower long-term conservation potential to 3:1 for lands with higher long-term conservation potential. The method for evaluating land for long-term conservation potential is application of the NCCP Flowchart (Conservation Guidelines, Attachment A of the Process Guidelines). The following is the analysis for TM5313RPL4:

1. Natural land: Is natural vegetation present? **YES.**
2. CSS: Is CSS present? **YES.**
3. Large size: Is CSS the most dense CSS in the subregion? **NO.** The land is near satellite focus areas of the NCCP Planning Unit Focus Map. The property is County land north of Escondido and east of I-15. It is not part of the "most dense" CSS based on the criteria of exceeding the 50% CSS cover within 0.5-mile radius (estimate is 25 percent).
4. Proximity: Is the land close to High Value District? **YES.** The project is within 4000 feet of a High Value District (50% CSS).
5. Landscape linkages: Is land located in corridor between Higher Value Habitat? **YES.** The land is within 1000 feet of the I-15 right of way and that area forms the I-15 "ladder" corridor from Escondido to the San Luis Rey River.

6. Species presence: Does the land support high density of target species? **NO**, California gnatcatcher and California rufous-crowned sparrow have been detected on site, but not in high density.

According to the NCCP Conservation Guidelines, when the answer to Number 3 is no and the answer to Number 4, 5, and/or 6 is yes, the flowchart indicates that the land has "Intermediate Value" for "Potential Long-term Conservation". Conclusion: A 2:1 habitat compensation ratio is appropriate under the NCCP guidelines and should be applied.

MONITORING AND REPORTING PROGRAM:

The following shall be the Monitoring or Reporting Program for this Habitat Loss Permit:

Public Resources Code Section 21081.6 requires the County to adopt a monitoring and reporting program for this project. This project is a component of a previous project for which an Environmental Impact Report was certified. However, certain conditions of approval are now required for compliance with County ordinances and regulations. A program must be adopted for the changes to a project which the County has adopted, or made a condition of project approval, in order to mitigate or avoid significant effects on the environment. The program must be designed to ensure compliance during project implementation.

The monitoring program is comprised of all the environmental measures adopted for the project. The full requirements of the program (such as what is being monitored, method and frequency, who is responsible, and required time frames) are found within the individual project conditions. These conditions are referenced below by category under the mechanism which will be used to ensure compliance during project implementation.

- Subsequent Project Permits

Compliance with the following conditions is assured because specified subsequent permits or approvals required for this project will not be approved until the conditions have been satisfied:

Condition I A, B, C, D; II A, B, C, D; III A, B, C, D, E, F, G, H

- Ongoing Conditions

Compliance with the following conditions is assured because County staff will monitor the on-going requirements and, if necessary, pursue the remedies specified in the project permit, the security agreement, or the mitigation monitoring agreement:

Condition III G, H

NOTICE: The issuance of this permit by the County of San Diego does not authorize the applicant for said permit to violate any federal, state, or county laws, ordinances, regulations, or policies, including but not limited to, the federal Endangered Species Act and any amendments thereto.

NOTIFICATION TO APPLICANT: The County of San Diego hereby notifies the applicant that State law (A.B. 3158) effective January 1, 1991, requires certain projects to pay fees for purposes of funding the California Department of Fish and Game. If you made this payment at the time of public review of the environmental document pursuant to Administrative Code Section 362, Article XX, effective August 27, 1992, you have met this obligation. If the fee has not been paid, to comply with State law, the applicant should remit to the County Department of Planning and Land Use, within two (2) working days of the effective date of this approval (the "effective date" being the end of the appeal period, if applicable), a certified check payable to "County Clerk" in the amount of \$_____ for a project with an Environmental Impact Report. These fees include an authorized County administrative fee of \$25. Failure to remit the required fee in full within the time specified above will result in County notification to the State that a fee was required but not paid, and could result in State imposed penalties and recovery under the provisions of the Revenue and Taxation Code. In addition, Section 21089(b) of the Public Resources Code, and Section 711.4(c) of the Fish and Game Code, provide that no project shall be operative, vested, or final until the required filing fee is paid.

DEFENSE OF LAWSUITS AND INDEMNITY: The applicant shall: (1) defend, indemnify and hold harmless the County, its agents, officers and employees from any claim, action or proceeding against the County, its agents, officers and employees to attack, set aside, void or annul this approval or any of the proceedings, acts or determinations taken, done or made prior to this approval; and (2) reimburse the County, its agents, officers or employees for any court costs and attorney's fees which the County, its agents, officers or employees may be required by a court to pay as a result of such approval. At its sole discretion, the County may participate at its own expense in the defense of any such action, but such participation shall not relieve the applicant of any obligation imposed by this condition. The County shall notify the applicant promptly of any claim or action and cooperate fully in the defense.

JUDICIAL REVIEW TIME LIMITATIONS: The time within which judicial review of this decision must be sought is governed by Code of Civil Procedure Section 1094.6, which has been made applicable in the County of San Diego by San Diego County Code Section 11.120. Any petition or other paper seeking judicial review must be filed in the appropriate court not later than the 90th day following the date on which this decision becomes final; however, if within 10 days after the decision becomes final a request for the record of the proceedings is filed and the required deposit in an amount sufficient to cover the estimated cost of preparation of such record is timely deposited, the time within which such petition may be filed in court is extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the party, or the party's attorney of record. A written request for the preparation of the

record of the proceedings shall be filed with the Director, Department of Planning and Land Use, 5201 Ruffin Road, Suite B, San Diego, California 92123.

The foregoing decision was approved by the Director of Planning and Land Use on date of decision. A copy of this decision, and the documentation supporting the decision, is on file in the Department of Planning and Land Use offices at 5201 Ruffin Road, Suite B, San Diego, California.

DEPARTMENT OF PLANNING AND LAND USE
ERIC GIBSON, DIRECTOR